

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 OSN Labs, LLC,

10 Plaintiff,

11 v.

12 Phoenix Energy, LLC,

13 Defendant.  
14

No. CV-23-01188-PHX-MTL

**ORDER**

15 Plaintiff OSN Labs, LLC (“OSN”) having filed a Motion for Entry of Default  
16 Judgment Against Defendant Phoenix Energy, LLC (“Phoenix Energy”) pursuant to Fed.  
17 R. Civ. P. 55(b)(2), and good cause appearing,

18 **THE COURT FINDS:**

19 1. Phoenix Energy was duly served the Summons and Complaint in this  
20 proceeding on September 25, 2023.

21 2. Phoenix Energy failed to timely answer or otherwise respond to OSN’s  
22 Complaint, and the Clerk of the Court entered Default against Phoenix Energy on October  
23 19, 2023.

24 3. The Court has personal jurisdiction over Phoenix Energy.

25 4. OSN’s well-pleaded Complaint supports claims of trademark infringement  
26 pursuant to 15 U.S.C. § 1114, unfair competition and false designation of origin pursuant  
27 to 15 U.S.C. § 1125(a), and Arizona common law trademark infringement and unfair  
28 competition asserted against Phoenix Energy.

1           5.     Phoenix Energy has infringed OSN's BLACKOUT trademark (*i.e.*, U.S.  
2 Trademark Registration No. 6,817,122).

3           6.     Phoenix Energy's infringement of OSN's BLACKOUT mark is found to be  
4 willful and intentional.

5           7.     Phoenix Energy's knowledge of OSN's BLACKOUT mark and its refusal to  
6 participate in this litigation qualifies this matter as an exceptional case, entitling OSN to an  
7 award of attorneys' fees and costs under 15 U.S.C. § 1117(a).

8           8.     Judgment is entered in favor of OSN and against Phoenix Energy for each  
9 claim alleged in OSN's Complaint.

10           **NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED**, that:

11           1.     Phoenix Energy must destroy all unsold Blackout products in its inventory,  
12 possession, custody and/or control.

13           2.     Phoenix Energy must recall and then destroy all unsold Blackout products  
14 that have been shipped to any distributor or retailer including, but not limited to, General  
15 Nutrition Corporation.

16           3.     Phoenix Energy must remove all reference to its Blackout products from any  
17 website or social media post affiliated with or controlled by Phoenix Energy.

18           4.     Phoenix Energy and all its employees, agents, partners, officers, directors,  
19 owners, shareholders, principals, subsidiaries, related companies, affiliates, successors-in-  
20 interest, assigns, distributors, retailers, dealers, and all individuals or entities in active  
21 concert or participation with any of the foregoing are permanently enjoined and restrained  
22 from directly or indirectly:

23                   (a)     Infringing OSN's U.S. Trademark Registration No. 6,817,122;

24                   (b)     Obtaining, possessing, shipping, delivering, or distributing any  
25 products, advertising material, goods or inventory bearing the name "Blackout";

26                   (c)     Using the name "Blackout" or any copy, reproduction, colorable  
27 imitation, or simulation of OSN's BLACKOUT mark, to advertise, market, promote,  
28 distribute, offer to sell and/or sell any Phoenix Energy product;

1 (d) Using any trademark, name, logo, design or service designation of any  
2 kind on, or in connection with, any Phoenix Energy product that is a copy, reproduction,  
3 colorable imitation, or simulation of, or confusingly similar to, OSN's BLACKOUT mark;

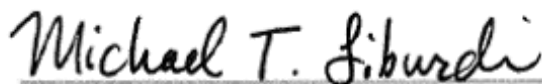
4 (e) Using any trademark, name, logo, design or source designation of any  
5 kind on, or in connection with, any Phoenix Energy product that is likely to cause  
6 confusion, mistake, deception, or public misunderstanding that the Phoenix Energy product  
7 is manufactured, authorized, licensed, sponsored, sanctioned, endorsed or approved by  
8 OSN, or that Phoenix Energy, or any Phoenix Energy product, is in some way affiliated,  
9 connected or associated with OSN;

10 (f) Attempting to or passing-off, inducing or enabling others to sell,  
11 distribute or pass-off any product bearing the Blackout name;

12 (g) Committing any acts calculated or intended to cause consumers to  
13 falsely believe that any Phoenix Energy product is manufactured, licensed, sponsored,  
14 endorsed, or approved by OSN, or connected or associated with any OSN product; and

15 (h) Otherwise competing unfairly with OSN in any manner.

16 Dated this 5th day of January, 2024.

17  
18 

19 Michael T. Liburdi  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27  
28